

### **REMARKS**

Claims 1-4, 6, 7 and 9-35 are currently pending in the subject application and are presently under consideration. Claims 1, 10, 24, 33, 34 have been amended as shown on pp. 2-6 of the Reply. Claim 36 has been added to emphasize several novel features of the applicants' claimed subject matter.

Applicants' representatives thank Examiner Won for courtesies extended during the interview for the Final Office Action mailed 5/29/08. During the interview on 6/11/08, it was revealed that the Final Office Action contained an improper Final Rejection. As a result, Examiner Won issued a Supplemental Final Office Action. Examiner Won respectfully declined an interview for the Supplemental Final Office Action. Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

#### **I. Rejection of Claims 10-13 and 17-23 35 Under 35 U.S.C. §102(e)**

Claims 10-13 and 17-23 stand rejected under 35 U.S.C. §102(e) as being anticipated by Matsumoto *et al.* (US 6,678,720).

The subject application relates to determining one or more communication channels to share content based on communication channel availability and the content to be shared. In particular, the content to be shared can be analyzed to determine the content size or type. This information can be used as a factor to determine the communication channel to use, along with information about the current availability of communication channels between the computers the content is to be shared between.

Matsumoto discloses a messaging system and device for enabling users to send messages to people that cannot directly connect to a chat system, such as an IRC chat system. For example, a voice message can be recorded by a person not directly connected to the chat system. An indication can then be sent over the chat system to one or more persons directly connected to the chat system that a voice message has been received and can be retrieved from an indicated URL. As a second example, text-to-speech can be used to read an IRC chat message to a person over the telephone or the chat message can be converted into an image that is faxed to the person off the chat system.

Claim 10 recites, "A system that facilitates file sharing...*a channel controller component that selects at least one communication channel that is determined to be available*

*to transport the content based at least in part upon analysis of the content and level of security of the content.”* (emphasis added). Matsumoto does not teach or suggest these aspects.

For a reference to anticipate, 35 U.S.C. §102 requires that “each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950 (Fed. Cir. 1999) (quoting *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)).

The Office Action has cited col. 4, lines 49-53 as teaching one of these aspects. However, as the Office Action indicates, the passage discusses a conversion means that converts the text data of the message history into a format suitable for a first information terminal. The exemplary information terminals are telephones and faxes, which only have a single communication with which to communicate.

However, if the content type is converted to be transported over the single available communication channel of an information terminal, the originally analyzed content is not the same content that will be transported over the communication channel and the content being transported and the content will not necessarily have a certain level of security associated with it. Moreover, a communication channel is not selected that is available to transport the content based at least in part upon the analysis of the original content as recited in claim 10. Matsumoto, in contrast, teaches that the content type to convert to and transport is determined based on the one available communication channel of the information terminal. Furthermore, Matsumoto merely teaches authentication for a user by comparing the inputted authentication with the stored authentication information (column 4, lines 30-39). Matsumoto does not teach the communication channel being selected based at least upon analysis of the content and security level of the content as recited in the claims. Consequently, Masumoto does not teach or suggest, “A system that facilitates file sharing...*a channel controller component that selects at least one communication channel that is determined to be available to transport the content based at least in part upon analysis of the content and level of security of the content.”* (emphasis added).

Thus, claim 10 (and dependent claims 11-13 and 17-23) is allowable over Matsumoto for at least this reason. Accordingly, withdrawal of claims 10-13 and 17-23 rejections and allowance of those claims is respectfully requested.

## II. Rejection of Claims 1-4, 6, 7, 30, 31 and 35 Under 35 U.S.C. §103(a)

Claims 1-4, 6, 7, 30, 31 and 35 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Matsumoto *et al.* (US 6,678,720) in view of Marker Jr. (US 4,802,220).

Claim 1 recites, “***a channel controller component that selects at least one communication channel that is determined to be available to transport the content based at least in part upon analysis of the content and security of content.***”

The Supreme Court, in *Graham v. Deere* (383 U.S. 1), said that three factual inquiries must be considered when making a *prima facie* obviousness determination. These factors are: 1) Determine the scope and content of the prior art; 2) Determine the differences between the prior art and the claims, and 3) Determine the level of skill of one in the art including: a) The educational level of the inventor; b) Types of problems encountered in the art; and c) Prior art solutions to those problems.

Moreover, the reference (or references when combined) must teach or suggest all claim limitations. *See* MPEP §706.02(j). The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the reference and not based on applicant’s disclosure. *See In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Marker does not make up for the aforementioned deficiencies of the primary references. In particular, Marker teaches splitting individual messages among multiple channels (column 2, lines 34-46), which does not teach or suggest, “***A system...a channel controller component that selects at least one communication channel that is determined to be available to transport the content based at least in part upon analysis of the content and security of the content.***” (emphasis added).

Thus, claim 1 (and dependent claims 2-4, 6, and 7) is allowable over Matsumoto in view of Marker for at least this reason. Accordingly, withdrawal of claims 1-4, 6, and 7 rejections and allowance of those claims are respectfully requested.

Claims 30, 31, and 35 are patentable for at least the same reasons as claim 1 is patentable. Accordingly, withdrawal of claims 30, 31, and 35 rejections and allowance of those claims are respectfully requested.

**III. Rejection of Claim 9 Under 35 U.S.C. §103(a)**

Claim 9 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Matsumoto *et al.* (US 6,678,720) in view of Marker Jr. (US 4,802,220) and further in view of Eberle, et al. (US 7,061,929).

Claim 9 is patentable for at least the same reasons as claim 1 is patentable. Eberle does not make up for the aforementioned deficiencies of the primary references. In particular, Eberle teaches packets are determined to meet a size criteria, those packets are transmitted with a high degree of scheduling to ensure high utilization of the channel (column 6, lines 5-8), which fails to teach or suggest the features recited in claim 1. Accordingly, withdrawal of claim 9 rejection and allowance of claim 9 is respectfully requested.

**IV. Rejection of Claims 14-16 and 24-29, 32-34 Under 35 U.S.C. §103(a)**

Claims 14-16 and 24-34 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Matsumoto *et al.* (US 6,678,720) in view of Eberle, et al. (US 7,061,929).

Claims 14-16 are allowable for at least the same reasons as claim 10 is allowable. Neither Matsumoto nor Eberle make up for the aforementioned deficiencies of the primary references. Accordingly, withdrawal of the rejection and allowance of claims 14-16 is respectfully requested.

Claims 24-29 and 32-34 are allowable for at least the same reasons as claim 10 is allowable. Neither Matsumoto nor Eberle make up for the aforementioned deficiencies of the primary references. Accordingly, withdrawal of the rejections and allowance of claims 24-29 and 32-34 is respectfully requested.

**CONCLUSION**

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP627US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number below.

Respectfully submitted,

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